

U.S. Serial No. 09/712,625
Response to the Office action of July 2, 2004

REMARKS

Claims 1-27

Claim 1 was objected to for informalities, but, otherwise, claims 1-27 were indicated to be allowed. It is respectfully submitted that the foregoing amendments have corrected any informalities that may have existed. Additionally, "step" language has been removed from a number of claims 1-27 to clarify the fact that such claims are not to be construed under 35 U.S.C. § 112, ¶ 6. It is respectfully submitted that such amendments are not narrowing and are not related to reasons for patentability because the claims have previously been indicated to be allowed.

It is respectfully submitted that claims 1-27 are in condition for allowance.

Claims 28-30

Claims 28-30 were rejected as being anticipated by Muckle (U.S. 5,603,077). The rejections are traversed and reconsideration is respectfully requested. Based on the foregoing amendments and the following remarks, it is respectfully submitted that claims 28-30 are in condition for allowance.

Muckle is directed to a method for remotely controlling satellite signal receivers. As shown in FIG. 1 of Muckle, an uplink provider broadcasts an uplink signal to a selected satellite, which relays the signal as a downlink signal to a signal receiver. As described in the background of Muckle, tuning the signal receivers has been problematic in the past, particularly if the signal receiver has been tuned away from a particular satellite channel. To alleviate the tuning problems, some system have utilized telephone lines or other networks to enable the uplink provider to control signal receiver tuning. The Muckle system teaches a wireless control system that enables the uplink provider to control wirelessly the signal receiver through an alternate communication path from that of the satellite.

In direct contrast to the Muckle system, claim 28 recites a method of transmitting an encoded direct-to-home satellite signal to enable automatic determination of satellite signal availability, wherein the method includes providing a predefined marker pattern, the predefined marker pattern including a network identifier and a frequency identifier and

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transmitting the marker pattern *from a satellite* on a plurality of frequencies associated with the satellite.

As an initial matter, Muckle does not disclose or suggest a system that enables automatic determination of satellite signal availability. To the contrary Muckle is directed to receiver remote control, not to signal availability determinations. Furthermore, as described above, Muckle emphasizes the importance of *not* using the satellite to transmit the predefined marker. Rather, the entire teaching of the Muckle reference focuses on a separate wireless communication path, rather than using the communication path from the satellite. Muckle cannot anticipate claim 28 or its dependents.

While Muckle fails to anticipate claims 28-30, Muckle also fails to render obvious such claims. If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). The Summary of the Invention section of Muckle states:

An advantage of the present invention is that it provides for a signal receiver that can be remotely controlled to select a satellite and a channel carrying a desired program by receiving a message [from a] source *other than the channel carrying the program*.

Muckle, 2:51-55 (emphasis added).

Because any modification to Muckle to cause the system to carry markers on communications from the satellite so drastically changes the Muckle system, there can be no motivation for such a modification.


The deficiencies of the Muckle disclosure and the operating principles of the Muckle system makes it impossible for Muckle to anticipate or render obvious the pending claims.

Reconsideration of the application and allowance thereof are respectfully requested. If there is any matter that the examiner would like to discuss, the examiner is invited to contact the undersigned representative at the telephone number set forth below.

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Respectfully submitted,

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